



# BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint by Elizabeth Nadine dated March 19, 1993, alleging discrimination in accommodation on the basis of age, reprisal, receipt of public assistance.

**B E T W E E N :**

Ontario Human Rights Commission

- and -

Elizabeth Nadine Garbett

**Complainant**

- and -

Gustav Fisher in his personal capacity and  
as Executor on behalf of the Estate of Margaret Fisher

**Respondent**

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## DECISION

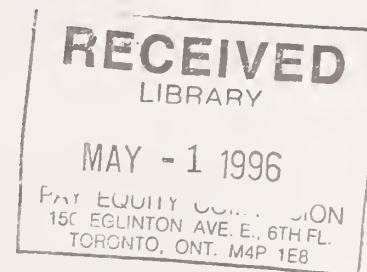
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Adjudicator : Katherine Laird

Date : April 18, 1996

Board File No: BI-0052-95

Decision No : 96-012



## APPEARANCES

Ontario Human Rights Commission	)	Ms. V. Taxali, Counsel
	)	Ms. T. Simon, Counsel
	)	Mr. W. van der Meide, Counsel

Elizabeth Nadine Garbett	)	Ms. J. Welikowvitch, Counsel
	)	Mr. T. Moore, Counsel

Gustav Fisher	)	On his own behalf
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Estate of Margaret Fisher	)	Gustav Fisher, Executor
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## INTRODUCTION

In February 1993, the respondent, Gustav Fisher, landlord of a property at 54 Kensington Avenue in Toronto, decided not to rent an apartment to the complainant, Elizabeth Garbett and a friend, Sarah Clark. The primary issue to be decided in this proceeding is whether the complainant was denied the apartment on the basis of a prohibited ground of discrimination under the Ontario *Human Rights Code* ("Code").

The complaint before the Board of Inquiry alleges that the complainant was refused accommodation because she was sixteen years of age and was receiving public assistance. Under section 2 of the Ontario *Human Rights Code*, the complainant has the right to equal treatment in accommodation without discrimination on the basis of age or receipt of public assistance. It is undisputed that the respondent did refuse to rent an apartment to the complainant, and that she was sixteen years of age and in receipt of assistance under the *General Welfare Assistance Act* (R.S.O. 1990, c. G.6) at the time of the refusal. The question to be determined is whether or not the evidence establishes that the complainant's age and her receipt of public assistance were reasons for the denial of rental accommodation. The Human Rights Commission ("Commission") need not prove that age and/or receipt of public assistance were the *only* reasons for the refusal to rent to the complainant; to establish discrimination, it is sufficient if the evidence demonstrates on the balance of probabilities that age or receipt of public assistance were among the reasons why the respondent decided not to rent an apartment to the complainant.

## HISTORY OF COMPLAINT BEFORE THE BOARD OF INQUIRY

The complainant filed the complaint with the Commission on March 19, 1993. The Commission referred the complaint to the Board of Inquiry by letter received May 25, 1995. The hearing before the Board commenced by conference call on June 20, 1995, at which time a mediation date was set for July, and the hearing scheduled for completion on August 23, 24 and 25, 1995.

Unfortunately the Commission, represented by an articling student, was unable to complete its case in August 1995, due to the unavailability of a witness, the human rights officer who investigated the complaint. The Commission sought and was granted an adjournment, on consent, and undertook to find suitable dates in the fall for completion of the hearing. However, the examination schedule of the articling student, now in the Law Society Bar Admission Course, prevented the Commission from finding mutually acceptable dates before January 9 and 10, 1996. The Board reluctantly agreed to re-schedule the hearing to January, only to have the Commission seek a further adjournment because the file had been transferred to a new articling student who was not available on the dates previously

requested by the Commission. The delay in the middle of the hearing and the assignment of a new articling student, although perhaps unavoidable, were unfortunate, particularly given the absence of a transcript. The hearing was finally completed on February 5 and 6, 1996.

## **ADDING THE ESTATE OF MARGARET FISHER AS A RESPONDENT**

At the outset of the hearing, the Commission sought an order adding the estate of Margaret Fisher as a respondent to the complaint. The Commission based its submissions on the fact that the registered owner of the property at 54 Kensington Avenue was the respondent, Gustav Fisher, in his capacity as executor of the estate of his late wife, Margaret Fisher.

The motion was supported by counsel for the complainant, and opposed by the respondent, who sought an opportunity to obtain legal assistance before making submissions in response to the motion. The respondent confirmed that he would be making submissions on behalf of the estate, and did not object to the Commission commencing its case in advance of his written submissions on the status of the estate.

Subsequent to the first day of hearing, the respondent filed a written opinion from a solicitor to the effect that the estate could not properly be made a respondent. The legal opinion relied on the fact that, under s. 45 of the *Code*, an estate was not one of the entities which could be held vicariously liable for the acts of its agents. The opinion also questioned whether an estate could be held liable in respect of an incident which occurred after the death of the testator.

By telephone conference call, the Board set dates for the receipt of reply submissions. The Board asked in particular that the submissions of the Commission and the complainant address the issue of whether an estate can be held responsible for the wrongful acts of its executor. The Commission filed a written reply to the respondent's submissions; in the reply, the Commission relied primarily on the jurisprudence on vicarious corporate liability. Counsel for the complainant did not file written submissions.

By oral decision, the Board ruled that, for the purpose of the proceedings, the estate of Margaret Fisher could be made a respondent party under s. 39(2)(c) on the basis of the Commission's allegation that the estate had infringed the rights of the complainant. The Board noted that the executor of the estate, Gustav Fisher, had received notice of the motion, and had participated in the hearing throughout. However, the Board advised the parties and counsel that, in its view, the submissions had not adequately addressed the issue of whether an estate can be found to incur liability for the actions of an executor. The Commission advised the Board that it was unable to respond to the



## INTRODUCTION

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Cole testified that to her knowledge, Fisher always rented to anyone who had first and last month's rent, whether or not they were under eighteen years of age or on welfare.

Scott testified that she knew Garbett and had seen her with the rent deposit money just before she went to apply for the apartment at 54 Kensington. She stated that Garbett came to see her after her application was rejected, and that she called Fisher to see what could be done. Scott testified that Fisher gave two reasons for not renting to the women: because his lawyer had told him that he could not enforce a contract if a tenant was less than eighteen years of age; and because the women had taken the receipt. Scott also testified that she represented Garbett at the Small Claims Court hearing, and that she had been unable to collect the judgment debt for the rent deposit.

Kim Bager, the investigating officer, testified that, when she interviewed Fisher in January 1995, he told her that he refused to rent to Garbett, not because she was under eighteen years of age, but because she could not obtain a guarantee from her mother. Bager testified that Fisher emphasized that the main reason that he did not rent to the two women was because they had "stolen the receipt" without leaving a deposit. Fisher acknowledged in cross-examination that he had told Bager that part of the reason for not renting to Garbett was the absence of a guarantor, but he again emphasized that the main reason was that the two women took the receipt.

The respondent gave evidence about his policies in renting to young people and to tenants receiving welfare assistance. Fisher testified that, as landlord of a large rental building in Hamilton, he had rented to many tenants on public assistance and to tenants under eighteen years of age. He said that, because the rents in his buildings were not expensive, low-income tenants were "the only ones who would rent this type of apartment". He thought that, in the past, he had perhaps been too generous with such tenants, causing himself financial difficulties. He stated that his lawyer had told him that children under eighteen years of age could not be held responsible for rental agreements, and that he should have a policy of only renting to young people if he had a guarantor for the rent. He testified that he told Garbett and Clark that it was his policy to require a guarantor, but that he would rent to them without a guarantor as long as he received first and last month's rent in advance. At another point in his testimony, however, he stated that he had never in his life asked any tenant for a guarantor, because getting first and last month's rent in advance was his guarantee. The evidence of Cole corroborated Fisher's testimony on this point.

In his evidence, the respondent gave more than one explanation of his reasons for not renting to the complainant. He stated several times that, even if she had not "stolen the receipt", he would never have agreed to take Garbett as a tenant after learning from her welfare worker that she would not be able to pay the last month's rent in advance. At another point in his evidence, however, he stated that



he had agreed to rent to the two women after accepting the completed application forms, and that he would have let them have the apartment even without last month's rent if they had not taken the receipt.

Another account of the reasons for not renting to the complainant was included in the Statement of Defence signed and filed by the respondent in Small Claims Court. In the Defence, Fisher describes the initial interview with Garbett and Clark, stating that he made out a deposit receipt after they told him they would pay \$120, and before looking at the completed application forms. In describing the sequence of events, the Defence states:

“After looking at the application and noting their ages, I was hesitant about renting to them and decided to call my lawyer first. With this in mind, I wrote on the receipt that if their application was not accepted their deposit would be returned to them. I left the room to go upstairs to my own private office, and when I returned, they were leaving and said they were going to see the apartment again. They did not return. At this point in time, I had received no money from them, but found on looking around the desk, that they had taken receipt. I was still not concerned as I felt that there was an oversight on their part. When I contacted the number they had given me, to say that my lawyer advised against renting to anyone so young, I assumed that would be the end of it. I made the call and explained to the person I spoke to, that I was advised not to rent to them. I also mentioned at that time that they had not paid any deposit but had taken the receipt.”

In cross-examination, the respondent appeared to disown the version of events outlined in the Defence, saying that he did not know what his secretary wrote down on the form filed in the Small Claims Court.

## **FINDINGS OF THE BOARD**

I find on the evidence that the complainant's age and her receipt of public assistance were at least among the reasons why the respondent did not rent the apartment to her. Human rights jurisprudence establishes that discrimination will be proven if one of the reasons for a negative impact on a complainant is a prohibited ground of discrimination, even if there is also evidence of other non-discriminatory reasons: *R. v. Bushnell Communications Ltd.* ((1973), 1 O.R. (2d) 442 (H.C.) , affirmed (1974), 4 O.R. (2d) 288 (C.A.). (For a listing of the cases following *Bushnell*, see J. Keene, Human Rights in Ontario 2nd ed. (Carswell, Toronto: 1992) at p. 352)



The findings with respect to each of the two prohibited grounds of discrimination, age and receipt of public assistance, are discussed separately below, followed by the findings on the allegation of reprisal.

### *Age of the Complainant*

I accept the complainant's evidence that the respondent did not read the information about her age on the application form until after accepting her application and filling out the receipt and the Rental Promise Note. This is consistent with the Statement of Defence filed by the respondent in the Small Claims Court, and with the note on the receipt itself. This version of events was corroborated in part by the evidence of Cole, whose testimony on other points supported the respondent.

Fisher's own testimony acknowledged that he raised his concern about the ages of the two women at some point during his initial interview with them. Fisher stated that he had told Garbett and Clark that his lawyer had advised him that he should only rent to someone "underage" if there was a guarantor. I accept Fisher's evidence that, despite his concern about their ages, he was not intending to require a guarantor in this case, and that in fact it was not his policy to routinely require a guarantor. I find that Fisher initially intended to rent to the two women without a guarantor, and without being aware of their exact ages, and that he had second thoughts after learning their ages from the application forms.

Fisher gave evidence that, even after realizing that Garbett was under 18 years of age, he would have rented to her if she had not taken the receipt without paying a deposit. I do not find the respondent's evidence on this point to be credible. The version of events presented by the respondent to explain his refusal on non-discriminatory grounds does not withstand scrutiny. Given Fisher's evidence of his extensive experience as a landlord, I find it completely improbable that he would have completed a receipt, and a welfare Rental Promise Note acknowledging payment of a rent deposit, without having at the same time received the money.

Neither is it believable that the complainant would have taken the receipt in an attempt to obtain that amount of money from the respondent or the welfare authorities. The evidence established that the complainant had been homeless for three years and had only first qualified for welfare a few days before applying to rent the apartment. To support her application for welfare, the complainant had to obtain documentation from her sister's adoptive mother establishing that she could not live at home. I accept her testimony that the most important thing for her at that time was to obtain housing, and the welfare support necessary to pay for housing. It is not credible that she would risk an

opportunity to rent an apartment for a dubious scheme to try to get an extra \$120 from a landlord or from her welfare worker.

Finally, I have considered, and rejected, the possibility that Clark, or an unknown third person, might have taken the deposit money off the desk unnoticed. I accept the complainant's evidence that she paid the money in cash to the respondent. It is simply not credible that either Garbett or Fisher would have left the money unattended on the desk and provided an opportunity for such a theft.

Fisher argued that, given that at the time he was a landlord of many rental units, he would not have had any reason to take \$120 from two young women on welfare. The evidence suggests, however, that if Fisher did receive the money, his motive for denying that fact was not financial, but rather to create a non-discriminatory explanation for his rejection of the two women as tenants. I find this reading of the facts to be most consistent with the overall preponderance of the evidence, particularly given the shifting nature of Fisher's testimony and the evidence of Cole, Crabbe and Scott. Fisher's credibility was undercut by the fact that he gave several differing explanations for his decision not to rent to the complainant, both in his testimony and in prior conversations with the witnesses. Garbett's credibility was enhanced by the consistency of her account of the events giving rise to the complaint, both in her testimony at the hearing and in statements made to Crabbe and Scott at the time.

However, in my view, it is unnecessary to make a specific finding that Fisher did receive a deposit. Even if somehow the respondent was not in fact left with the money, and if this was one reason why he did not rent to the two women, I find on the evidence that the age of the complainant was also a reason for refusing her rental application. If his only concern was that there was no deposit, he could have discussed this with Garbett's welfare worker, sought an explanation from the two women, and tried to arrange to receive a deposit. There was no evidence from the respondent or any other witness to indicate that he had made any attempt to obtain a further rent deposit.

### *Receipt of Public Assistance*

I accept the respondent's evidence that he had often rented to tenants who were receiving public assistance, including municipal welfare. I also accept his evidence that he had rented to young people receiving welfare. However, the question at issue is not whether on other occasions the respondent applied non-discriminatory criteria in selecting tenants, but whether, in this case, receipt of public assistance was one of the reasons why the complainant was denied housing. The evidence of both the complainant and the respondent establishes that Fisher was willing at first to accept Garbett as a tenant even though he would have realized, from the Rental Promise Note, that she was receiving welfare. But Fisher's own testimony also establishes that, after he learned from the welfare

worker that she would not be able to provide Garbett with money for last month's rent, he decided that he could not rent to the two women in any event because they would not be able to pre-pay for the final month. Fisher emphasized this point in his testimony: his policy was that he would not rent to anyone who did not give him last month's rent in advance. Cole's evidence corroborated Fisher on this point.

A policy of requiring last month's rent in advance from every applicant is not in itself discriminatory. However, such a policy, if applied as a requirement of all applicants, would have the effect of excluding from tenancy any person receiving welfare assistance in Metropolitan Toronto, given the municipal policy, at least at that time, of not providing recipients with money to pre-pay last month's rent. In our case, it appears that the Garbett's failure to pay last month's rent at the time of her application did not initially result in a rejection, either because the respondent was willing to make an exception, or because he did not realize that the welfare authorities would not subsequently provide the money to pre-pay the last month's rent. However, the respondent's own testimony establishes that inability to pre-pay the last month's rent became a reason for rejecting the complainant's application after the welfare worker told him that money would not be provided for a last month's rent deposit. Accordingly, I find that the respondent's requirement that tenants in every case pay last month's rent in advance had an adverse impact on the complainant as a person in receipt of public assistance and constituted constructive discrimination under s. 11(1) of the *Code*.

### ***Reprisal***

The Commission made no submissions in closing argument on the issue of reprisal, other than to note that the respondent used derogatory language when the complainant went to his office to talk to him after her application had been rejected. Neither counsel for the complainant nor the respondent made any submissions on reprisal.

In the circumstances, I make no finding as to whether the evidence could support a finding of reprisal under s. 8 of the *Code*.

### **LIABILITY OF THE ESTATE OF MARGARET FISHER**

The submissions of the parties were inadequate on question of whether the estate of Margaret Fisher could be held liable for a finding of discrimination. The Commission argued in its written submission that the estate "is by law responsible for the acts of its agent while acting within the scope of his authority", but did not provide authority, in legislation or jurisprudence, for this assertion. Although



I indicated that I had concerns in this area and might require further submissions, neither the Commission nor the complainant's counsel expressly requested the opportunity to make further submissions. Under the circumstances, and in the interests of bringing finality to these proceedings, I have decided to make a determination of the liability issue without obtaining further submissions.

The question to be determined is whether, and in what circumstances, an estate will be held liable for the actions or conduct of an executor. The Ontario Law Reform Commission considered this issue in its 1991 publication, *Report on Administration of Estates of Deceased Persons*. The report includes a useful summary of the law and provides a context for our issue, beginning at p. 85:

“The nature and extent of the personal representative's liability arises as a question under the present law because an estate is not a legal entity, like a corporation, that itself can acquire rights or incur liabilities or that can sue or be sued. Hence, the only legal person against whom an action can be brought, whether it is for an act or omission of the deceased occurring prior to death, or for a contract made by the personal representative in the course of the administration of the estate, is the personal representative. While the special character of the estate requires that suits by brought against personal representatives as defendants, there is an question whether they should bear liability of a personal nature, for which their own assets may ultimately answer, or liability of a representative nature, rendering only the assets of the estate liable.”

A distinction is made in this passage between liability arising from the actions of the deceased prior to death, and liability in respect of the actions or conduct of the personal representative in administering the estate. The jurisprudence clearly establishes that a right of legal action on which a deceased might have been sued while alive, will survive against the estate after death and be enforceable against the executor in a representative capacity: Williams, Mortimer, Sunnucks, *Executors, Administrators and Probate*, (London: Stevens & Sons, 1993) at 553 and 558. (An exception is made for actions for defamation or seduction, which do not survive death.)

Applied to our facts, this means that Gustav Fisher, as executor of his wife's estate, is liable in a representative capacity on behalf of the estate for liabilities incurred by his wife before her death. In other words, had the act of discrimination in our case occurred during the life of his wife, any liability that she then had would pass to him as executor in a representative capacity, and the assets of the estate would ultimately be responsible for satisfying an order. This rule is codified in section 38(2) and (3) of the *Trustees Act*, (R.S.O. 1990, c. T.23), which allows an action to be brought against an executor, at any time before the expiration of two years from the death of the testator, for a wrong committed by the deceased or for which he or she was by law liable. Although the Commission relied on this section, I find it has no application to the facts of the case before me as the deceased did not incur liability, by her actions or by law, during her lifetime.



Turning then to the law respecting the liability of an estate for the actions of the executor, the jurisprudence establishes the general rule that an executor is responsible in a personal capacity for any liabilities arising out of his/her actions or conduct: *Halsburys' Laws of England*, Vol. 17 (4th ed., 1976), para. 1537 and 1540, at 784-5.) The only exception is with respect to contracts entered into by an executor where consideration for the contract is a prior contract or transaction with the testator. In every other circumstance, an executor is personally liable for contracts entered into on behalf of the estate, and for civil wrongs or torts committed in the course of administering the estate: Williams, Mortimer, Sunnucks, p. 713-715.

The following passage from the Law Reform Commission report (at p. 88) summarizes the law:

“An estate cannot “act” in a legal sense, incur liability or be treated as a principal in an agency relationship and, consequently, it cannot be sued. Thus, after the death of the deceased, personal representatives do not, in any legal sense, act on behalf of the estate, either as an agent or in any other representative capacity; personal representatives only act personally, notwithstanding that their conduct is intended to benefit the estate and, indeed, should not enure to their own personal advantage.”

The rule has been applied most recently in the Canadian context in the case of *Sullivan v. Sullivan*, (1991), 128 A.R. 241. At p. 241, the rule is broadly stated as follows:

“An estate is not liable for the personal liability of an executor. ... The estate’s liabilities are those only those of the deceased.” (Emphasis in original.)

Although primary liability rests with the executor in his personal capacity, where an executor causes an injury or tort in the course of the reasonable management of the estate, he or she may be entitled to be indemnified out of the assets of the estate and the claim of the person may be subrogated to the executor’s indemnity: *Halsburys'*, p.785 at 1540.

This principle was applied in the Canadian case of *Groundwater v. Groundwater*, (1935), 10 M.P.R. 56 (N.B.S.C.) in the following passage:

“An executor is liable for his torts personally and not in his representative capacity as executor. Where he commits a tort, acting reasonably in the interests of the estate, he is entitled to be indemnified out of the estate, and the party damaged by the tort is entitled to be subrogated to such indemnity.”

Applied to our facts, this means that if the respondent is entitled to be indemnified out of the estate in respect of a monetary award of this Board, the complainant may be able to make application to the courts seeking satisfaction of the Board’s order. It would appear to be open to the beneficiaries to

oppose indemnification on the basis that an action amounting to discrimination is not reasonable conduct in the administration of the estate.

In conclusion, I find that the estate of Margaret Fisher cannot be held liable before this Board for the conduct of its executor which has been found to infringe the complainant's rights under the *Code*. As noted by the letter of legal opinion filed by the respondent, an estate does not attract vicarious liability under s. 45(1) of the *Code* and does not incur liability through the acts of its executor. Liability for the respondent's discriminatory conduct attaches to the respondent in his personal capacity and not as executor of the estate.

## REMEDY

### *Public Interest Remedy under s. 41(1)(a)*

Neither the Commission or nor complainant counsel made submissions requesting a public interest remedy. I direct the respondent to post *Human Rights Code* cards in the front halls of any buildings of which he is currently a landlord or property manager.

### *Special Damages under s. 41(1)(b)*

The Commission sought special damages in the mount of \$90 for three months to compensate the complainant for the difference between the rent at 54 Kensington Avenue and the rent she actually paid after February 1993.

The evidence established that the complainant was able to rent a room two or three weeks after the events giving rise to this complaint, at a monthly cost of \$390, including utilities. She rented the room, at the Norman Elder Museum, from March 1 to June 1, 1993. The room was not equivalent housing to the two bedroom apartment at 54 Kensington Avenue, but the cost was comparable, given that the rent of \$600 for the Kensington apartment, to be shared by the two women, did not include utilities. There was no evidence as to the cost of utilities for the two bedroom apartment, and in the absence of such evidence, I can only assess an approximate amount for special damages in this area. Estimating the utility costs for a two bedroom apartment in 1993 at \$40 per month per tenant, I award the complainant \$50 a month for the three months she lived in the room. In view of the fact that this award is based on a rough estimation, I find an award of interest would not be appropriate.

From June 1, 1993 to August 31, 1993, Garbett shared an apartment costing \$550 a month, including utilities, with another young woman who was apparently unable to qualify for welfare. Garbett paid

the full rent herself out of her monthly welfare cheque of approximately \$650. From September 1993 to June 1995, the complainant was able to find shared accommodation at a cost comparable to or less than the cost of accommodation at 54 Kensington Avenue. Neither the Commission or complainant counsel sought special damages for the period after June 1, 1993.

The Commission also sought special damages to compensate the complainant for the cost of her public transportation while she looked for alternative accommodation in February 1993. I award the complainant the cost of the seven public transit trips, estimated at \$12.

Finally, the Commission sought special damages in the nature of an hourly wage for the time spent by the complainant searching for alternative housing. This was estimated at two hours a day for 35 days, at a rate of \$10 per hour, for a total amount of \$700.

I decline to award damages to compensate the complainant for her time spent looking for other accommodation. The Commission was unable to give any explanation as to how the hourly wage of \$10 per hour was arrived at, and was unable to provide any precedents for such an award. There might be circumstances in which such an award is appropriate, particularly if a complainant has to take unpaid time off work as a result of discriminatory conduct. In this case, the complainant, through no fault of her own, had never had the opportunity to have paid work, and could not be said to have experienced a wage loss arising out of the infringement of her rights justifying a restitutionary award under s. 41(1)(b) of the *Code*.

#### *General Damages under s. 41(1)(b)*

The Commission sought an award of general damages for the complainant in the amount of \$3000. Counsel for the complainant made no submissions with respect to the quantum of general damages. The respondent submitted that an award of \$50 would be appropriate if a finding were made against him.

It was somewhat unclear if the Commission was seeking general damages as compensation for loss of dignity and for loss of the right to freedom from discrimination, or as compensation for mental anguish. Although the written submissions of the Commission cited the leading human rights decisions dealing with awards for mental anguish, the oral submissions did not touch on the question of whether the discrimination in this case could be considered wilful or reckless within the meaning of s. 41(1)(b).

In my view, the evidence supports a compensatory award of general damages for loss of dignity and for loss of the right to freedom from discrimination. The complainant did not find secure housing for



another two or three weeks after her application was rejected. She testified that she was humiliated and hurt by the treatment she received from the respondent: the denial of the apartment and particularly the allegation that she had stolen the receipt. She was deeply offended by the fact that he called her a “bum” when she went to see him because at this point in her life she believed that she was finally going to be able to get herself off the streets, into secure housing, and back into school.

The evidence established that she had been unable to live at home and that she had a very difficult time as a homeless child. Even without the assistance of the Commission’s expert witness on homelessness among children, I would taken note of the fact that a person under the age of 16, unable to live at home, and living in hostels and on the street, will suffer enormously and in many ways. The effect of the respondent’s refusal to rent to the complainant was to put her back into a situation from which she was trying to escape.

In his submissions on damages, the respondent noted that he was not responsible for the fact that the complainant was homeless when she applied for an apartment in his building. While this is true, a respondent is nevertheless responsible for the foreseeable impact of discrimination on the person whose rights are infringed, including in some circumstances, a heightened impact arising from any particular vulnerability of the complainant: *Koba v. Brave Beaver Works et. al* (Board of Inquiry, July 19, 1993); *Bruce and Jackson v. McQuire Truck Stop et. al* (Board of Inquiry, February 1993); *Torres v. Royalty Kitchenware Ltd.*, ((1982), 3 C.H.R.R. D/858). The respondent knew that the two young women applying to rent his apartment had no income other than welfare assistance. In his own testimony, he established that he had considerable experience, as a landlord, dealing with young people on welfare in difficult and unstable situations. He would certainly have been aware of the potential impact on the complainant of his refusal to accept her as a tenant.

In his submissions, the respondent also asked the Board to consider the difficulties which he had experienced as a landlord of low-cost housing with tenants of limited financial means. His testimony indicated that he had experienced a significant turnover in occupancy, and that his best security for loss of income was to always collect last month’s rent in advance. Although there was no independent evidence to support the respondent, I accept his testimony that he would, with some regularity, lose rental income when tenants were unable or unwilling to pay rent. The respondent testified that his financial difficulties had resulted in the loss of a residential rental building in Hamilton.

Nevertheless, financial difficulties on the part of a respondent cannot justify conduct or policies which discriminate on the basis of a prohibited ground under the *Code*. A landlord doing business in the province of Ontario must be in a position to run his rental operations in keeping with legislated anti-discrimination protections. Although the respondent may well have honestly believed that the



complainant was a bad risk as a tenant, the entire purpose of human rights law is to prevent individuals from being excluded from employment rights, services or housing because of assumptions based on their membership in a group identified by a prohibited ground of discrimination. The respondent thought that the complainant was a bad risk because she was only 16 years of age and living on welfare. The evidence of the complainant suggests that this assessment was in fact wrong. She has obtained housing, schooling and employment since the events giving rise to the complaint. She is entitled to compensation for having been wrongfully denied housing because of her age and her receipt of public assistance. I find that the amount of \$2500 to be reasonable in light of the particular impact of the discrimination on the complainant.

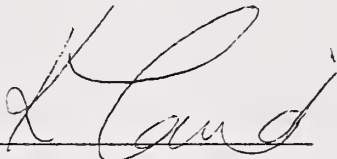
## ORDER

The Board of Inquiry directs the respondent, Gustav Fisher, to pay to the complainant, Elizabeth Nadine Garbett, within thirty days of the date of this Order:

- (a) the amount of \$162 as compensation for financial losses arising out of the infringement; and
- (b) the amount of \$2500 for loss of dignity, emotional suffering and for loss of the right to freedom from discrimination,

together with post-judgment interest at the applicable rate under the *Courts of Justice Act*, ( R.S.O. 1990, c. C.43, s.127) on these sums from the date of this Order.

Dated at Toronto this 18th day of April, 1996

A handwritten signature in cursive script, appearing to read 'K. Laird', written over a horizontal line.

Katherine Laird  
Board of Inquiry